



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

February 10, 2006

IA 05-041

Theodore D. Simmons II
**HOME ADDRESS DELETED
UNDER 10 CFR 2.390**

SUBJECT: CONFIRMATION OF COMMITMENTS FOLLOWING ADR SESSION--
DRAFT CONFIRMATORY ORDER (NRC Office of Investigations Report
No. 1-2003-011)

Dear Mr. Simmons:

In a letter dated August 18, 2005, the NRC provided you with the results of an investigation completed by the NRC Office of Investigations (OI), Region I Field Office, on May 25, 2005, (OI Case No. 1-2003-011). Based on the evidence developed during the investigation, OI concluded that you deliberately failed to report missing licensed material as required, and provided incomplete and inaccurate information, orally and in writing, to the NRC in violation of 10 CFR 30.9(a). Our August 18, 2005, letter attached a letter to the National Aeronautics and Space Administration (NASA) regarding this matter, as well as a Factual Summary of the OI investigation.

Our August 18, 2005, letter and attached factual summary of the OI report, also informed you that we were considering escalated enforcement action against you for an apparent violation of 10 CFR 30.10, NRC's rule prohibiting deliberate misconduct. This rule, in part, prohibits deliberately submitting false information to the NRC. 10 CFR 30.10(a) provides, in pertinent part, that any employee or contractor of any licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or any term, condition, or limitation of any license issued by the Commission. Our letter indicated that in apparent violation of 10 CFR 30.10(a), you deliberately: (1) caused NASA not to provide the proper notification and a subsequent report in a timely manner contrary to 10 CFR 20. 2201; and (2) caused NASA to provide incomplete and inaccurate information to the NRC during the December 2002 inspection regarding accountability of licensed material.

As a result of these findings, our letter offered you a choice to: (1) attend a Predecisional Enforcement Conference; or (2) request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve any disagreement on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. ADR is a general term encompassing various techniques for resolving conflict using a neutral third party, and the NRC currently has a pilot program for using ADR. The technique that the NRC decided to employ during the pilot program, which is now in effect, is mediation.

At your request: (1) a joint ADR mediation session was held at the NASA facility in Greenbelt, Maryland, on November 4, 2005, between you, NASA, and the NRC; and (2) an individual ADR

session was held in the Region I Office in King of Prussia, PA on December 19, 2005, between you and the NRC, at which NASA participated in portions of the mediation. The elements of the settlement agreement are as follows:

1. The NRC determined that violations of NRC requirements occurred at NASA when: (a) contrary to 10 CFR 20.1501, you failed to perform a reasonable and necessary evaluation of information provided to you in memoranda from a health physics technician on September 10, 2002, and October 21, 2002, to determine whether the licensed material reported, in those memoranda, as missing at the NASA Goddard Space Flight Center in Greenbelt, Maryland, reached the threshold for reportability under 10 CFR 20.2201; and (b) contrary to 10 CFR 30.9(a), you provided inaccurate information to an NRC inspector during an NRC inspection on December 18-19, 2002, when you provided an inspector with an inventory form used by health physics technicians to account for sources indicating all sources were accounted for when, in fact, sources were not accounted for at the time.
2. You agreed that you caused NASA to violate NRC requirements when you failed to perform a reasonable and necessary evaluation, pursuant to 10 CFR 20.1501, of information provided to you by the health physics technician, to determine whether the licensed material reported as missing in the memoranda identified in Item 1 reached the threshold for reportability under 10 CFR 20.2201. You also agreed that you provided inaccurate information during the December 18-19, 2002, inspection, as noted in Item 1.
3. The NRC maintained that your actions were willful, at a minimum, in careless disregard of NRC requirements, because you had reasonable information that material was not accounted for, yet failed to evaluate and take appropriate action, and you provided information to the inspector that was inaccurate. You contended that your actions were not willful or in careless disregard, in part, because you had doubts about the accuracy of the information, and did not believe it warranted an immediate evaluation. The NRC and you agreed to disagree on the willfulness of your actions.
4. While you and the NRC agreed to disagree on the willfulness of your actions, you and the NRC agreed that your actions caused NASA to be in violation of NRC requirements, which resulted in an enforcement action that will be taken against NASA as part of a separate ADR agreement between NASA and the NRC.
5. Subsequent to the NRC's identification of these violations, you took actions to assure that you learned from these violations and provided the NRC with assurance that it would not recur. These actions included attendance at a 40-hour Radiation Safety Officer course in November 2005 which addressed the issue of communications and reportability to the NRC.
6. During the ADR mediation session, you recognized an opportunity for others in the industry to learn from your actions which contributed to the violations set forth in Item 1. Therefore, you agreed to take the following future corrective actions, namely: (a) providing a lessons learned presentation to all NASA Goddard users of material, as will other NASA Goddard employees willing to attend, addressing, at a minimum, reporting requirements, requirements for ensuring completeness and accuracy of information, and

being forthright with the NRC in response to questions from inspectors; and
 (b) providing a similar session to employees from other NASA facilities at a future NASA Occupational Health Conference in 2006.

7. You agreed to complete the additional actions in Item 6 by August 31, 2006, and send a letter to the NRC informing the NRC that these actions are complete. You agreed to send this letter to the NRC within 30 days of completion of all actions.
8. In light of the actions you took as described in Item 5, the actions you have committed to take as described in Items 6 and 7, and the action that the NRC will take against NASA for the violations, the NRC agrees to neither issue a Notice of Violation to you, nor issue an Order banning you from NRC-licensed activities. Rather, the NRC will issue a letter and Confirmatory Order to you confirming the commitments set forth herein. This letter and the Confirmatory Order will be publicly available in ADAMS, will appear on the NRC "Significant Enforcement Actions - Individuals" website for a period of one (1) year, and will be discussed in a press release announcing the ADR agreement between NASA and the NRC.
9. You agreed to issuance of the letter and Confirmatory Order (Order) confirming this agreement and also agree to waive any request for a hearing regarding this Order.

Enclosed with this letter is the Confirmatory Order. You are not required to respond to this letter. However, in accordance with the settlement agreement, you are required to respond to the Order. Your written response to the Order, and your response to the Notice, if you choose to provide one, should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region I, 475 Allendale Road, King of Prussia, PA 19406, and marked "Open by Addressee Only," within 30 days of the date of this letter.

A copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter on its website for a period of 1 year at www.nrc.gov; select **What We Do, Enforcement, Significant Enforcement Actions**. Your response, if you choose to provide one, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

If you have any questions or comments concerning this letter, please contact Ms. Sally Merchant of my staff at 301-415-2747.

Sincerely,

/RA/

Michael Johnson, Director
 Office of Enforcement

T. Simmons

Enclosures: As Stated
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ENCLOSURE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
Theodore D. Simmons, II

IA 05-041

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Theodore D. Simmons, II (Mr. Simmons) is employed by a contractor hired to provide various health and safety services to NASA's Goddard Space Flight Center. Mr. Simmons serves as the Radiation Safety Officer (RSO) on the NRC license.

II

On January 16, 2003, the NRC Office of Investigations (OI) initiated an investigation (OI Case No. 1-2003-011) at NASA. Based on the evidence developed during its investigations, OI did substantiate that Mr. Simmons deliberately failed to report missing licensed material as required, and provided incomplete and inaccurate information, verbally and in writing, to the NRC in violation of 10 CFR 30.9(a). The results of the investigation, completed on May 25, 2005, were sent to Mr. Simmons in a letter dated August 18, 2005.

III

Subsequent to the inspection in December 2002, and after becoming aware of the details of the apparent violation, Mr. Simmons undertook a number of corrective actions to assure that these events would not recur. These actions included changing the manner in which assessments were completed and source location was verified, and attendance at a 40-hour Radiation Safety Officer course in November 2005 which addressed the issue of communications and reportability to the NRC.

In response to the NRC's August 18, 2005, letter, Mr. Simmons requested the use of Alternative Dispute Resolution (ADR) to resolve these apparent violations and pending enforcement action. ADR is a process in which a neutral mediator, with no decision-making authority, assists the NRC and the individual to resolve any disagreements on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. At Mr. Simmons' request: (1) a joint Alternative Dispute Resolution (ADR) mediation session was held at the NASA facility in Greenbelt, Maryland, on November 4, 2005, between Mr. Simmons, NASA, and the NRC; and (2) an individual ADR session was held in the Region I Office in King of Prussia, PA, on December 19, 2005, between Mr. Simmons and the NRC, at which NASA participated in portions of the mediation. These ADR sessions were mediated by a professional mediator, arranged through Cornell University's Institute of Conflict Management. Based on the discussions during the ADR sessions, a settlement agreement was reached regarding this matter. The elements of the settlement agreement are as follows:

10. The NRC determined that violations of NRC requirements occurred at NASA when:
 - (a) contrary to 10 CFR 20.1501, Mr. Simmons failed to perform a reasonable and

necessary evaluation of information provided to him in memoranda from a health physics technician on September 10, 2002, and October 21, 2002, to determine whether the licensed material reported, in those memoranda, as missing at the NASA Goddard Space Flight Center in Greenbelt, Maryland, reached the threshold for reportability under 10 CFR 20.2201; and (b) contrary to 10 CFR 30.9 (a) Mr. Simmons provided inaccurate information to an NRC inspector during an NRC inspection on December 18-19, 2002, when he provided an inspector with an inventory form used by health physics technicians to account for sources indicating all sources were accounted for, when in fact, sources were not accounted for at the time.

11. Mr. Simmons agreed that he caused NASA to violate NRC requirements when he failed to perform a reasonable and necessary evaluation, pursuant to 10 CFR 20.1501, of information provided to him by the health physics technician, to determine whether the licensed material reported as missing in the memoranda identified in Item 1 reached the threshold for reportability under 10 CFR 20.2201. Mr. Simmons also agreed that he provided inaccurate information during the December 18-19, 2002, inspection, as noted in Item 1.
12. The NRC maintained that Mr. Simmons' actions were willful, at a minimum, in careless disregard of NRC requirements, because Mr. Simmons had reasonable information that material was not accounted for, yet failed to evaluate and take appropriate action, and he provided information to the inspector that was inaccurate. Mr. Simmons contended that his actions were not willful or in careless disregard, in part, because he had doubts about the

accuracy of the information, and did not believe it warranted an immediate evaluation. The NRC and Mr. Simmons agreed to disagree on willfulness of his actions.

13. While Mr. Simmons and the NRC agreed to disagree on the willfulness of Mr. Simmons' actions, Mr. Simmons and the NRC agreed that Mr. Simmons' actions caused NASA to be in violation of NRC requirements, which resulted in an enforcement action that will be taken against NASA as part of a separate ADR agreement between NASA and the NRC.
14. Mr. Simmons, subsequent to the NRC's identification of these violations, took actions to assure that he learned from these violations and provided the NRC with assurance that it would not recur. These actions included attendance at a 40-hour Radiation Safety Officer course in November 2005 which addressed the issue of communications and reportability to the NRC.
15. During the ADR mediation session, Mr. Simmons recognized an opportunity for others in the industry to learn from his actions which contributed to the violations set forth in Item 1. Therefore, Mr. Simmons agreed to take the following future corrective actions, namely: (a) providing a lessons learned presentation to all NASA Goddard users of material, as well as to other NASA Goddard employees willing to attend, addressing, at a minimum, reporting requirements, requirements for ensuring completeness and accuracy of information, and being forthright with the NRC in response to questions from inspectors; and (b) providing a similar session to employees from other NASA facilities at a future NASA Occupational Health Conference in 2006.

16. Mr. Simmons agreed to complete the additional actions in Item 6 by August 31, 2006, and send a letter to the NRC informing the NRC that these actions are complete. Mr. Simmons agreed to send this letter to the NRC within 30 days of completion of all actions.
17. In light of the actions Mr. Simmons took as described in Item 5, the actions Mr. Simmons has committed to take as described in Items 6 and 7, and the action that the NRC will take against NASA for the violations, the NRC agrees to neither issue a Notice of Violation to Mr. Simmons, nor issue an Order banning him from NRC-licensed activities. Rather, the NRC will issue a letter and Confirmatory Order to Mr. Simmons confirming the commitments set forth herein. This letter and the confirmatory Order will be publically available in ADAMS, will appear on the NRC "Significant Enforcement Actions - Individuals" website for a period of 1 year, and will be discussed in a press release announcing the ADR agreement between NASA and the NRC.
18. Mr. Simmons agreed to issuance of the letter and Confirmatory Order confirming this agreement and also agrees to waive any request for a hearing regarding this Confirmatory Order.

IV

In light of the actions Mr. Simmons has taken and agreed to take to correct the violations and prevent recurrence, as set forth in Section III above, the NRC has concluded that its concerns regarding the violations can be resolved through the NRC's confirmation of the commitments as outlined in this Confirmatory Order.

I find that Mr. Simmons' commitments as set forth in Section III above are acceptable. However, in view of the foregoing, I have determined that these commitments shall be confirmed by this Confirmatory Order. Based on the above, and Mr. Simmons' consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR § 2.202 and 10 CFR Parts 20 and 30, IT IS HEREBY ORDERED, THAT:

1. Mr. Simmons will: (a) provide a lessons learned presentation to all NASA Goddard users of material, as well as to other NASA Goddard employees willing to attend, addressing, at a minimum, reporting requirements, requirements for ensuring completeness and accuracy of information, and being forthright with the NRC in response to questions from inspectors; and (b) provide a similar session to employees from other NASA facilities at a future NASA Occupational Health Conference in 2006.
2. Mr. Simmons will complete these additional actions by August 31, 2006, and will send a letter to the NRC informing the NRC that these actions are complete. Mr. Simmons will send this letter to the NRC within 30 days of completion of all actions.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Simmons of good cause.

Any person adversely affected by this Confirmatory Order, other than Mr. Simmons, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and must include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, and to the Director of the Division of Regulatory Improvement Programs at the same address. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel by means of facsimile transmission to 301-415-3725 or e-mail to OGCMailCenter@nrc.gov. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR § 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be

considered at such hearing shall be whether this Confirmatory Order shall be sustained. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE EFFECTIVENESS DATE OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Michael Johnson, Director
Office of Enforcement

Dated this 10th day of February 2006